

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MONRELL DONOVAN MURPHY,
Plaintiff,
v.
D. FLORES,
Defendant.

No. 1:23-cv-00740-NODJ-BAM (PC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS REGARDING
DISMISSAL OF CERTAIN CLAIMS
(ECF No. 12)

Plaintiff Monrell Donovan Murphy is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 7, 2023, the assigned Magistrate Judge screened Plaintiff's complaint and found it stated cognizable claims against Defendant D. Flores for excessive force in violation of the Eighth Amendment and for retaliation in violation of the First Amendment, but failed to state any other cognizable claims for relief. (ECF No. 6.) The Magistrate Judge ordered Plaintiff to either file a first amended complaint or notify the Court of his willingness to proceed only on the cognizable claims identified by the Court. (*Id.*)

On October 30, 2023, Plaintiff filed a notice to proceed on the cognizable claims identified by the Court. (ECF No. 11.) Pursuant to Plaintiff's notice, on October 31, 2023, the Magistrate Judge issued findings and recommendations that this action proceed on Plaintiff's

1 complaint against Defendant D. Flores for excessive force in violation of the Eighth Amendment
2 and for retaliation in violation of the First Amendment. (ECF No. 12.) The Magistrate Judge
3 further recommended all other claims be dismissed based on Plaintiff's failure to state a claim
4 upon which relief may be granted. (*Id.*)

5 On November 8, 2023, in lieu of objections, Plaintiff filed a response clarifying that he
6 has elected to proceed only on the claims for excessive force and retaliation. (ECF No. 13.) In
7 his response, Plaintiff clarifies that he never intended to assert claims for equal protection or
8 verbal harassment. (*Id.*)

9 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
10 de novo review of this case. Having reviewed the file, including Plaintiff's response to the
11 findings and recommendations, the Court finds the findings and recommendations to be supported
12 by the record and by proper analysis.

13 Accordingly, IT IS HEREBY ORDERED as follows:

- 14 1. The findings and recommendations issued on October 31, 2023, (ECF No. 12), are
15 adopted in full;
- 16 2. This action shall proceed on Plaintiff's complaint, filed May 12, 2023, (ECF No. 1),
17 against Defendant Flores for excessive force in violation of the Eighth Amendment
18 and for retaliation in violation of the First Amendment;
- 19 3. All other claims are dismissed from this action for failure to state claims upon which
20 relief may be granted; and
- 21 4. This action is referred back to the Magistrate Judge for proceedings consistent with
22 this order.

23 DATED: January 2, 2024.

24 
25 _____
26 CHIEF UNITED STATES DISTRICT JUDGE
27
28